IN THE

Supreme Court of the United States

THE PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, *Appellant*,

vs.

THE BOARD OF PUBLIC WORKS OF THE STATE OF WEST VIRGINIA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

BRIEF IN BEHALF OF APPELLANT.

Statement of Facts.

This is a suit in equity, brought in the Circuit Court of the United States, for the District of West Virginia, by the Pittsburg, Cincinnati, Chicago & St. Louis Railway Company, a corporation created and organized under the laws of the state of Ohio, against the Board of Public Works of the State of West Virginia, a corporation of said State of West Virginia, William A. MacCorkle, Governor of said State of West Virginia; I. V. Johnson, Auditor of said State of West Virginia; John M. Rowan, Treasurer of said State of West Virginia; Virgil A. Lewis, Superintendent of Free Schools of said State of West Virginia; T. S. Riley, Attorney General of said State of West Virginia, composing the Board of Public Works, and W. P. Cowan, sheriff of Brooke county, in said State of West Virginia.

The suit was brought to restrain the defendants from collecting taxes for the year 1894, on the plaintiff's bridge across the Ohio river between the States of West Virginia and Ohio. The bill was filed on the 25th day of March, 1895, and on the same day a temporary injunction was awarded by the Judge of said circuit court, and a motion to make the said injunction permanent was set for hearing on the 4th day of April, 1895.

Section 67 of Chapter 29 of the Code of West Virginia,* made it the duty of the plaintiff, through its president, vice president or principal

*For said section 67 see page 25 of this brief.

accounting officers, to make return in writing, under oath, to the Auditor of the State of West Virginia, on or before the First day of April, 1894, of the property of the plaintiff subject to taxation in the said State for the year 1894, and also made it the duty of the said Auditor to lay said return, as soon as practicable after it is made before a tribunal of said State, known as the Board of Public Works, composed of the Governor, Auditor, Treasurer, Superintendent of Free Schools and Attorney General of said State. The said Statute further made it the duty of the said Board of Public Works, which is declared by section 1 of chapter 56 of said Code* to be a corporation, to either approve said return or proceed in the manner prescribed in said section 67 to assess and fix the fair cash value of all of the property of said plaintiff, which said plaintiff was required by said section 67 to return for taxation.

Said section 67 further provided that as soon as possible after the value of said property was fixed for purposes of taxation, that the said Auditor should assess and charge said property with the taxes properly charged thereon.

The plaintiff, through its proper officer, made the return required of it, in the manner required by said statute, and a copy of said return will be found on pages 6 and 7 of the printed record in this case.

Said return showed that the said plaintiff was the owner of 6.53 miles of main track and the same number of miles of second track in the county of Brooke, in said State of West Virginia, which included the entire length of the said bridge, to-wit: 2044 feet, including the abutments of said bridge, 1518 feet of said bridge being in the State of West Virginia and 526 feet thereof being in the said State of Ohio.

The said Auditor and the said Board of Public Works accepted the said return in so far as it showed the length of the plaintiff's track and charged the said plaintiff with the entire length of track in said county of Brooke, to-wit: 6.53 miles, and then placed a special or additional valuation of two hundred thousand dollars ($200,000) upon said bridge, placing the taxes upon said bridge for said year at three thousand and sixty dollars ($3,060).

Neither the said Auditor nor any member of the said Board of Public Works notified or informed the plaintiff of this action, although on the 28th day of September, 1894, the plaintiff's Chief Engineer, M. J. Becker, addressed a communication to the said Auditor, asking him what action had been taken by himself and the said Board of Public Works with regard to the assessment of taxes on plaintiff's pro-

*For said section 1 see page 32 of this brief.

perty in the said State of West Virginia for the year 1894 The plaintiff received no information from any source as to the action of the said Auditor or the said Board of Public Works with regard to the said taxes until the 19th day of January, 1895, when it was notified by the said auditor, among other things, that it had been assessed with a separate or special valuation upon the said bridge of two hundred thousand dollars ($200,000) and charged with the taxes thereon, amounting to the sum of $3,060, as taxes for the year 1894.

The valuation of the plaintiff's property in the said State of West Virginia, for the year 1894, in addition to the valuation placed upon said bridge was three hundred and ten thousand eight hundred and thirty dollars ($310,830), the total taxes on which amounted for said year to four thousand one hundred and eighty seven dollars ($4,187).

On the 19th day of January, 1895, a demand was made upon the plaintiff by the said Auditor for the payment of its taxes for said year, including the said sum of $3,060 00, taxes upon said bridge, and it tendered to the said Auditor the full amount of the taxes due on its said property for the year 1894, not including the said tax upon said bridge, to-wit: the sum of $4,187 00, which said sum the said Auditor accepted on account of said taxes, but still insisted upon his right to collect the sum of $3,060 as taxes upon the said bridge. A short time after the said 19th day of January, 1895, the said Auditor added 10 per cent to the said sum of $3,060, under the said Statute, to pay the expenses of collecting said sum and certified the said sum, with the said 10 per cent added thereto, to the said W. P. Cowan, sheriff of said county of Brooke. Said sheriff afterwards made a demand upon the plaintiff for the said sum of $3,060 00, and the said 10 per cent additional thereto, and the plaintiff refusing to pay the said sum said sheriff made a levy upon one of the plaintiff's engines to enforce the collection thereof. On the 13th day of June, 1895, the defendants appeared by counsel and filed their demurrer to the said bill, which said demurrer will be found on pages 12 and 13 of the printed record. And at the same time the defendants moved the court to dissolve the said injunction. The matters arising upon the said motion were argued by counsel and submitted to the court, and on the 30th day of November, 1895, the court entered the order or decree found on page 14 of the printed record, sustaining the demurrer, dissolving the said injunction and dismissing the plaintiff's bill, and from said order or decree, the plaintiff appealed, assigning the errors found upon pages 15 and 16 of the printed record.

The plaintiff in this cause insists that the demurrer interposed by

the defendants to the plaintiff's bill, as well as the motion of said defendants to dissolve the preliminary injunction heretofore awarded in this cause, should be over-ruled, for the following reasons:

First—Because the taxation of plaintiff's bridge mentioned and described in the bill, as a separate structure from the railroad, instead of as a part of the railroad, is illegal and improper.

Second—Because the defendants have taxed said bridge not only as a separate structure, but also as a part of defendant's railroad.

Third—Because the defendants failed to notify the plaintiff, even after being requested to do so, either of the amount of the taxes assessed against the plaintiff, or of the manner in which said taxes were assessed.

Fourth—Because the assessment and collection of the said taxes, under the circumstances of the case, would deprive the plaintiff of its property without due process of law.

Fifth—Because the taxation of plaintiff's bridge, both as a part of plaintiff's line of railway and as a separate structure, is an unwarranted and illegal interference with inter-state commerce.

Sixth—Because the tax complained of by the plaintiff constitutes a cloud upon the plaintiff's title to the said bridge.

The plaintiff being a non-resident of the State of West Virginia, under Section 2, of Article 3, of the Constitution of the United States, and the Federal Judiciary Act, this court has concurrent jurisdiction with the courts of the State of West Virginia over the subject matter involved in this cause. And this is true whether the case involves the construction of the Federal Constitution or Statutes, or not. In other words, if there be lodged anywhere within any judicial tribunal of the State of West Virginia, original jurisdiction over the subject matter involved in this case, by reason of the diverse citizenship of the parties, this court has concurrent jurisdiction with such State court. But we insist that the Fourth and Fifth grounds above mentioned involve questions of Federal Law, without regard to the citizenship of the parties.

We, therefore, have a case, as we think, in which this court has jurisdiction on the First, Second, Third and Sixth grounds above mentioned, by reason of the diverse citizenship of the parties, and also has jurisdiction on the Fourth and Fifth grounds, without regard to the citizenship of the parties.

And these grounds above stated will be discussed in the order in which they are above presented.

I.

We insist that plaintiff's bridge ought to be assessed and taxed as so many feet of railroad track, at the average rate per foot at which the entire line of road in the State of West Virginia is assessed and taxed. It is true that the fifteen hundred and eighty (1580) feet of plaintiff's track, comprising that portion of its bridge which lies within the State of West Virginia has cost the plaintiff vastly more money than any other portion of its said road of equal length, but that is the plaintiff's misfortune, and not its fault. It would gladly secure the passage of its trains over the Ohio river at less expense, if it were possible to do so. It would only be too glad to reduce the expense of this portion of its road to an average cost, if that were possible, but it is not possible, and the plaintiff should not be required to bear an enormous and expensive burden of taxation simply because it is not able to accomplish a physical impossibility. This fifteen hundred and eighty feet of track has no separate earning capacity, and no earning capacity other than as so many feet of railway, and is not worth more to the plaintiff than any other equal number of feet, although it cost vastly more.

The theory of the Board of Public Works seems to be that it should continue to pile up taxes in proportion to the expense to which the plaintiff is driven, so far at least as the plaintiff's bridge over the Ohio river is concerned. But even the Board is wholly inconsistent in the application of this theory, and thereby clearly demonstrates the fallacy of the theory.

The plaintiff's other bridges within the State of West Virgin.a which (including the New Cumberland branch and the P. W. & Ky branch) number some eight or ten, are each taxed as so many feet of railway. This is also true as to all of its cuts and fills and of the large number of tunnels of the other lines of railway within the State of West Virginia, and it will be readily conceded that these bridges, trestles, cuts, fills, and tunnels cost vastly more per foot than any ordinary portion of the plaintiff's line of railway.

What reason can there be for making this distinction, and how can these inconsistencies be explained, if the theory adopted by the Board of Public Works be correct? Certainly it would apply to all of the other bridges, and to the trestles, cuts and fills of the plaintiff as well as to the plaintiffs' bridge over the Ohio river.

This clearly demonstrates not only that the Board of Public Works is wrong in the theory, but that it knows that it is wrong.

The Statute conferring upon the Board of Public Works the authority under which it assumed to act in the assessment and tax-

ation of plaintiff's bridge (Sec. 67 of Chap. 29, of the Code of West Virginia) assuming it to be constitutional and valid, clearly shows, as it seems to us, that the bridge is not to be singled out and taxed as a separate structure, but is to be valued as so much railroad. The 5th sub-sec. of Sec. 67, provides that the officer of a railway company who makes the return to the Auditor, provided for by Sec. 67, shall show in detail "Its depots, station houses, freight houses, machine and repair shops, and machinery therein, and all other buildings, structures and appendages connected thereto or used therewith, together with all the other real estate, other than its railroad track, owned or used by it in connection with its railroad, and not otherwise taxed, including telegraph lines owned or used by it, the fair cash value of all buildings and structures and all such machinery and appendages and of each parcel of such real estate, including such telegraph lines and the fair cash value thereof in each county in this State in which it is located."

Now if the plaintiff's bridge is properly taxable as a separate structure, it is by reason of the provisions of this fifth sub-section. It will not be seriously contended that this bridge is included in any of the words "depots," "station houses," "freight houses," "machinery and repair shops and machinery therein." If it is covered by the fifth sub-section at all, it must be by the words "and all other buildings, structures and appendages connected thereto or used therewith, together with all other real estate, other than its railroad track, owned or used by it in the operation of its railroad, and not otherwise taxed, including telegraph lines owned or used by it, and the fair cash value of all buildings and structures, and all such machinery and appendages, and of each parcel of such real estate." The words "And all other buildings, structures and appendages connected thereto or used therewith," are evidently intended to qualify some portion of the said fifth sub-section which precedes them, and to which they are connected by the words "thereto" and "therewith." To what then do these words refer? Do they refer to buildings, structures and appendages connected to and used with the company's depots, or its station houses or its freight houses or its machine and repair shops and the machinery therein? Or do they refer to buildings, structures and appendages connected to or used with the railroad track? They must refer to one or the other of these. There is nothing else to which they could possibly apply. But in any possible event they are buildings and appendages connected to or used with something else, and are not buildings, structures and appendages which form a part of the rail-

road track and are only used incidentally in connection therewith. Now, a bridge, while it may be regarded as a building or a structure in the same sense in which a trestle is a building or a structure, is nevertheless such a building or structure as forms a portion of the railroad track, and is not such a building or structure as is connected to or used with the railroad track. The line of railway would be entirely complete and trains could be run over it from end to end without a depot, or a station house or a freight house or a machine or repair shop, but it would not be complete and trains could not be run over it without the bridges forming the portions of the road which lie across streams of water, ravines, etc.

It is significant, as we think, that the word "bridge" is not only not mentioned anywhere in the fifth sub-section of Section 67, but it is not mentioned in Section 67 at all, while every other possible or imaginable form of building or structure is specifically mentioned in the fifth sub-section. The reason for this, as we think, is that the Legislature regarded railroad bridges as constituting portions of the railroad track, to be included under that portion of the return required by the first sub-section of section 67, which calls upon the company to report to the Auditor the whole number of miles of railroad owned, operated or leased by the company within the State.

It may be claimed that there is some consolation for the defendants in this case to be drawn from the remainder of the fifth sub-section, requiring the railroad company to return to the Auditor "the fair cash value of all buildings, structures, and all such machinery and appendages and of each parcel of such real estate." But we think it clear that the words "buildings," "structures," "and all such machinery and appendages," "and of each parcel of such real estate," refer to the same things which are included in the first portion of the said fifth sub-section by the words "depots," "station houses," "freight houses," "machine and repair shops and machinery therein, and all other buildings, structures and appendages connected thereto or used therewith, together with all other real estate other than its railroad track," and do not include bridges. And in view of the entire sub-section taken together, we think it clear that bridges are intended to be included as part of the railroad track and as exempt from taxation as separate structures. And the intention of the legislation to exempt railroad bridges, which, like the one in controversy, have no separate earning capacity, from special taxation, is made still more manifest by section 63 of chapter 29 of said Code.* By this last mentioned section, the legislature has provnded that railroad bridges with a separate earn-

*For said section 63 see page 31 of this brief.

ing capacity, shall be specially assessed for purposes of taxation by a local officer, and not by the auditor the or Board of Public Works, while it has made no provision whatever for the special assessment or taxation of railroad bridges which have no separate earning capacity. This clearly shows, as we insist, that neither the auditor, the Board of Public Works nor any other officer or tribunal has any authority to specially tax a railroad bridge without a separate earning capacity, or to tax it in any other manner except as a part of the railroad itself.

Counsel for the defendants have considerable to say in their learned and ingenious brief regarding the widely different systems under which railroad property is taxed, and in that connection seek to make a distinction between what they term the "unit" or "entirety" system and a system by counties, and quite a large number of authorities are cited in support of the alleged distinction. It will, of course, be conceded that there is a diversity in the different States in methods of taxation, not only of railroad property, but of all property, but we are not able to see how this aids the defendants. The authorities cited by them nowhere make the distinction which they rely upon. There is no case cited by the defendants, and none that can be cited, which holds that railroad bridges are to be taxed as a part of the line of railway in one class of States, because they have the entirety system of taxation, and that such bridges should be taxed as separate structures in another class of States because they have a system of taxation by counties. Even if such distinction existed it would not aid the defendants. The question is one of the proper construction of our own statute, and under that statute the plaintiff is required to return to the Auditor for assessment and taxation, the whole number of miles of railroad owned, operated or leased by it within the State, as provided by the first subsection of Section 67, all of its rolling stock, as provided by the fourth sub-section, all of its depots, station houses, etc., as provided by the fifth sub-section, all of its personal property, as provided by the sixth sub-section, and its gross expenditures, as provided by the eighth sub-section. And for the purpose of distribution of the taxes when collected it is required to show the number of miles of its railroad track in each county through which it runs, including its branches, side and second tracks, switches, etc. So that for the purpose of assessment and taxation we have what counsel for the defendants term the unit or entirety system, while for the purpose of distribution we have what they call a system by counties. The first is a system of assessment and taxation, while the second is merely a system of distri-

bution of taxes. Our system of assessment and taxation, then, is essentially the unit or entirety system, and if any such distinction as is insisted upon by counsel for the defendants existed, it would be in favor of our theory of the case and not of the theory relied upon by the defendants. No case has been found, and it is believed that none can be found, that bears directly upon this question, unless it be that of Schmidt vs. Galveston, etc., Railroad Company, 24 S. W. Rep. 546, which holds that "A bridge owned by a railroad company on its line of road is properly returned for taxation as so much mileage of railroad, and can not be again taxed as a bridge." This case does not set out the Texas statute and we have been unable to find that statute anywhere else, and are therefore not able to say positively that the case is directly in point, but we think that this case may be fairly understood as holding that in the absence of a statute expressly authorizing the taxation of railroad bridges as separate structures, such bridges can only be taxed "As so much mileage of railroad."

As already shown, our statute does not either expressly or by implication authorize the taxation of a railroad bridge as a separate structure, and in this view Schmidt vs. Galveston, etc., R. R. Co. is directly in point.

Counsel for the defendants lay great stress upon the use of the word "structures" as used in our statute, and insist that a railroad bridge is a structure.

We may concede and in fact have conceded that this is true, and yet it is not such a structure as is referred to in our statute, as we think we have clearly shown.

Tolland vs. Wilmington, cited by counsel for defendants is not in point unless it be the holding that "What constitutes a bridge in a particular case, is a question of fact, rather than a question of law."

The case of the C., M. & St. P. R. R. Co. vs. Sabula, is based upon the Iowa statute, which specifically provides that bridges shall be included in the assessment, and even in that case the court distinctly recognizes the fact that a railroad bridge constitutes a part of the main line of a railroad track. We quote the following language: "If the Illinois Central Railroad Company should purchase this bridge from its present owners (referring to a bridge over the Mississippi river at Dubuque, owned by a bridge company) and continue the running of their trains over the same, it would then constitute a part of the main line of the company, connecting Cairo and Chicago with Sioux City, just as the Sabula bridge (the one in question) constitutes a part

of the main line of the Chicago, Milwaukee & St. Paul Railroad Company," page 181.

Sangamon vs. County of Morgan holds that a railroad track is real property and that the jurisdiction of the county to levy a tax on such property does not extend beyond the limits of the county. It will readily be seen that this case is not in point.

People vs. Sacramento is not in point; that case construes the constitution and statutes of California, and holds that under them a Board of appraisers of a county through which a railroad runs which passes through more than one county, can not change the assessment of the State Board of Equalizations.

Providence vs. Wright does not bear upon this question. The principal point decided in that case is that bridges are real estate, but it nowhere recognizes the distinction sought to be made by counsel for the defendants, and does not hold that it is proper to tax a railroad bridge as a separate structure, instead of treating it as a portion of the railroad track.

Cass County vs. C., B. & Q. R. R. Co. is not in point. It involves the construction of a Nebraska statute, in a case involving the right of local tax authorities to tax a railroad bridge over the Missouri river. The statute requires the officers of the railroad company to return for assessment and taxation to the Auditor of Public Accounts, the number of miles of railroad in each county and the total number of miles in the State, including roadbed, right of way and superstructure thereof, main and side tracks, depot buildings and depot grounds, section and toll houses, rolling stock and personal property, necessary for the construction, repairs or exclusive operation of the road. And it also provides substantially that all other property of the road, both real and personal, shall be returned to the local taxing officers. The question was whether under the statute the bridge over the Missouri river could be taxed by the local officers, and the court held that it could.

So far as the case of Baltimore etc. vs. Western Maryland etc. bears upon this case at all, it is clearly in favor of the plaintiff. It shows that both the Legislative and Judicial departments of the government of Maryland regarded the taxation of railroad bridges as separate structures improper. Alvey, J., in his opinion at page 300 says: "By a distinct clause or provision in that statute (Act of 1876, Chap. 159), it is provided that no extra assessment shall be made and no extra or special tax shall be levied or collected on any bridge or bridges over any streams or any tunnel forming any part of the roadway of

any railroad or railroads in this State; it being the meaning and intent of this Act, that any bridge over streams, or any tunnel forming a portion of the roadway of any said railroads shall be valued at the same rate that any other equal portion of said road is valued." Here, then, is a statute showing that the Legislature of the State of Maryland was so far impressed with the idea that a railroad bridge or tunnel should be treated, assessed and taxed as so much railroad track, that it adopted a positive statute to that effect, and the Supreme Court of the State sustained the statute, not only without questioning the policy of the Legislature in enacting it, but without questioning the right of the Legislature to do so. We think our Legislature has done by implication precisely what the Maryland Legislature did by express enactment, and that our law on the subject is in substance and in effect the same as the Maryland law.

State vs. Mutchler, involved the construction of the New Jersey statute, and held that the bridge in controversy should be taxed separately because it belonged to a foreign corporation which was not a railroad company within the meaning of the statute.

Counsel for the defendants say that they believe that no State having a system such as ours has decided adversely as to the right to tax bridges as bridges and in the counties in which they are located. In reply to this, we beg leave to submit that no court anywhere has decided in favor of the right of a State to tax railroad bridges as bridges or as separate structures.

The contention of counsel for the defendants, that if the railroad were taken away the bridge would still be valuable property, and that as a toll bridge, connecting the city of Steubenville with the thickly populated portion of West Virginia opposite to it, it would have a greater market value than the sum at which the bridge is assessed, is pure assumption, without a particle of proof to support it. This bridge was not built, and was not intended to be used as a toll bridge. If we may be permitted to speculate upon or refer to facts not in evidence, as counsel for defendants have done, in this connection, we might say, and say truly, that the bridge in question is not of sufficient width to make it valuable as a toll bridge, that it is not so situated with reference to the location of the city of Steubenville as to make it useful as a toll bridge connecting said city with the portion of West Virginia lying opposite thereto, and further that said portion of West Virginia is not thickly populated, and there would be little, if any demand for a toll bridge at that point, and that the value of our bridge, considered

simply as a toll bridge, and not as a part of our railroad track, would be very limited indeed.

II.

Even if we should concede that the defendants had the right to assess and tax the bridge in question as a separate structure, it would be undoubtedly true that they would not have the right to tax it both as a separate structure and as a portion of the railroad track, as they have done in this case. The bill charges and the demurrer admits that the bridge was included in the return as a part of the railroad track, and was taxed as such, and that the whole of that tax has been paid to the proper officer of the State, but the defendants, not satisfied with having received the full amount of the taxes on the bridge, considered as a portion of the railroad, placed an additional valuation of two hundred thousand dollars upon it as a separate structure.

In order to sustain the injunction in this cause, it is not necessary for us to attack either of the methods of assessment and taxation referred to by counsel for defendants, but only to show that a State can not resort to both methods at the same time and with regard to the same property. Either the bridge is a portion of the said railroad, or it is a separate structure, and can not, in the nature of things, be both at the same time.

It is scarcely worth while to cite authorities in support of the proposition that the same property can not be taxed twice, whatever may be the method of taxation. If authorities were necessary, we would cite again Schmidt vs. R. R. Co. Supra., which upon this question is precisely in point, and expressly holds that where a bridge is returned and taxed as so much mileage of railroad, it can not again be taxed as a bridge, and this would be especially and emphatically true under Sec. I of Article 10, of the Constitution of West Virginia, providing as it does, for equal and uniform taxation. This section has been fully construed by the Supreme Court of West Virginia in the case of C. & O. R. R. Co. vs. Miller, Auditor, 19 W. Va. 408.

It is true that this case holds that by the constitutional provision above referred to the Legislature was inhibted from passing a law exempting the property of a company from taxation, but it would be equally true that the same section would prevent the taxation of property twice, and would prevent the Legislature from passing an act involving double or unequal taxation, for it would be absurd to say that the Board of Public Works, or any other public functionary,

could impose double or unequal taxation with impunity while the Legislature is prohibited from doing so.

But counsel for defendants say that even if it should appear that a greater length of road or track was assessed than should have been, an injunction will not, for that reason only, be perpetuated or retained. No authority has been cited, and we think none can be, in support of this proposition. In addition to that, this is not a fair statement of the matter in controversy. It is not a case in which too much track has been assessed, but a case in which the same property has been twice assessed and taxed, both as a railroad and as a bridge, and no authority can be found to support such taxation. Indeed, counsel for the defendants practically admit themselves, that it would not only be improper, but illegal. We are also told that our remedy for this improper and illegal taxation was an appeal to the Circuit Court for a proper reduction, and inferentially, at least, that an injunction will not lie. Assuming for the present that the appeal provided for by section 67 could furnish a remedy in any case (a question which we will further discuss in another part of this brief) we answer that under the peculiar and extraordinary facts and circumstances of this case, an appeal was impossible. Section 67 made it the duty of the Auditor to notify the plaintiff of the action of the Board of Public Works as soon as possible after he had completed the assessment. But no such notice was furnished at any time. The Board of Public Works met pursuant to the statute, some time in September, 1894, and on the 28th day of September, 1894, the plaintiff having received no notice or information with regard to its action, addressed a letter through its Chief Engineer, Mr. Becker, to the Auditor, inquiring what action had been taken by the Board with regard to the assessment and taxation of plaintiff's property for the year 1894, but not only did the Auditor persist in his failure to notify the plaintiff as required by the Statute, but he also failed to answer Mr. Becker's communication, and up to the 19th day of January, 1895, it was impossible to get any information from any source touching this question, and the only information that was received then, came in the nature of a demand upon the plaintiff for the taxes which had been assessed upon plaintiff's property for the year 1894.

Under section 67, these taxes were due on the 20th day of January, and it was not only impossible for the plaintiff to appeal from the action of the Board of Public Works within the short period allowed it, but upon the very next day the Auditor, acting under the statute, proceeded to add ten per cent to the amount of the taxes with which

the plaintiff was charged, because said taxes were not paid when due. It was not only impossible to take an appeal, but it was likewise impossible to pay the taxes upon the day upon which they matured, because there was not time enough to do either. The additional ten per cent amounts to $316.00 There is no provision anywhere in the laws of West Virginia for an appeal from the action of the Auditor imposing this additional burden, no matter what the circumstances under which it is imposed.

The injunction is asked for as much for the purpose of relieving the plaintiff from the payment of the additional $216.00 as from the payment of the entire portion of the taxes on the bridge as a separate structure, and as to the $316.00, at least, there is absolutely no appeal to any tribunal, either judicial or ministerial.

This, we think, completely disposes of any suggestion of an appeal in this cause. This double taxation is what counsel for the defendants are pleased to term an "inadvertence" and an inadvertence of such a character that it does not constitute a cloud upon the title of the palintiff to the property involved, and especially that it does not in any respect constitute a cloud upon the title to the bridge. We are at a loss to understand the reasoning by which defendant's counsel reached this conclusion. No authority is cited in support of the proposition and no argument is offered, but counsel content themselves with a mere statement of it.

There will, we think, be no controversy about the fact that the plaintiff's bridge is a part of the plaintiff's real estate.

It is equally clear that all taxes levied upon plaintiff's property are a lien upon plaintiff's real estate, including its bridges. And whether the taxes involved in this controversy be proper or improper, legal or illegal, or whether they be the result of an inadvertence or the result of a wilful and deliberate purpose to wrongfully tax the plaintiff, they are at least an apparent lien which would affect the value of the property in the markets, and that, we respectfully submit, constitutes a cloud upon the title of all of plaintiff's real estate, and is sufficient to give a court of equity jurisdiction to stop the collection of taxes by injunction, if such taxes are improper or illegal.

Counsel for the defendants say a tender should have been made of the legal tax, that is of the taxes on the bridge and the 7.11 miles of track, less 1518 feet, but if the State has no legal right to tax the bridge as a separate structure, then all of the tax upon the bridge is illegal, and constituting as it does a cloud upon the title to the bridge, equity will restrain the collection of it.

The authorities all practically agree as to this proposition, and many of the cases cited by counsel for the defendants are in support of it, as will hereafter be shown. But, if upon the other hand, the court should be of opinion that the tax upon the bridge as a separate structure is legal and is authorized by the West Virginia statute (which we can not think possible), still, as we have already shown, the taxing of this bridge both ways was certainly illegal, and we were under no sort of obligation to make a tender of illegal taxes. It may be further said that no calculation was made as to the amount of taxes which would be due upon the 1518 feet of bridge and no separate bill was presented for said taxes, and the plaintiff did not and could not know how much of the tax demanded of it was assessed upon the 1518 feet of the bridge. In no possible view of the matter therefore can it be justly said that we were under any obligation to make a tender of anything except for the 7.11 miles of railroad, and that we did make, and it was accepted by the Auditor. But it is insisted that the plaintiff was in fault in not reporting the length of track and bridge, and if it had done so, anything like trouble and confusion would have been avoided. This assumes the very matter in controversy in this cause. If it was illegal and improper to tax the bridge as a separate structure, then we were certainly under no obligation to report the length of the track and the bridge, and even if that should be held to be the proper and legal method of taxation, still the Board of Public Works proceeded, itself, to determine the number of miles of railroad with which it would charge the plaintiff, and it is the mistake of the Board, and not the mistake of the plaintiff that we are complaining of, and in no event could the plaintiff be properly or reasonably held responsible for the mistakes of the Board. Counsel contend, however, that at most the injunction will be retained only for the excess, the 1518 feet of track or road.

Again we observe that no authority is cited in support of this proposition and no argument is offered. In reply to it we say that if the double taxation of the 1518 feet of track or road is illegal or improper, that illegality affects the entire tax. If it is illegal in part, it is illegal as a whole. The court can not, in the nature of things, separate it and say a part of the tax is legal and a part of it illegal. Especially is that true in a case such as this, in which no separate valuation has been placed upon the portion of road which is twice taxed.

III.

We have already said in discussing the Second proposition in connection with the question of an appeal nearly all that need be said with regard to the Third proposition. All that need be said here is that by his failure to give the proper notice as required by the statute, and especially by his failure or refusal to answer the letter of inquiry of Mr. Becker, the Auditor practically deprived us of all right of appeal in the case, and not only cut us off from every means of remedy except such as a court of equity can furnish by its injunctive process, but also made it impossible for us to pay these taxes when they were due, even if they had been legal and proper. And then because he had deprived us of these rights, the Auditor proceeded to place upon us an additional burden of ten per cent of the amount of the taxes in dispute. Certainly a court of equity can not permit such conduct upon the part of a public officer and will not hesitate to interfere by way of injunction to restrain the collection of such taxes. If public officers can be permitted to so conduct the affairs of their offices, then all of the property of the State is practically at their mercy. If they can disregard one solemn provision of the statue, a provision, too, which is intended for the protection of the individual citizens of the State, they can with equal impunity disregard any other provision of the statute, or any number of them. And if they can withhold from citizens important information, when politely and properly asked for it, and then hold the citizen responsible for his failure to receive such information and heap additional burdens of taxation upon him for such failure, then indeed is the situation of the property owner an exceedingly perilous one.

If the limitations properly established by legislation are once passed with impunity, then all restrictions upon the conduct of public officers are practically removed and the property of the citizen is entirely subject to their caprice or their greed—a condition of affairs as dangerous to the citizen and as deplorable and as subversive of individual rights as can be found in any of the Monarchial Governments of the Old World, not even excepting the tyranny and oppression visited upon his subjects by the Autocrat of all the Russias. If the court is not to interfere with this reckless disregard of a solemn and important duty, where is the interference to commence, and who shall say what public officers may or may not do in the way of trespassing upon the rights of the citizen and his property. Surely such a condition of affairs calls loudly for the interference of the Chancellor.

IV.

To permit the defendant, Cowan, the Sheriff of Brooke county, to sell the engine upon which he made a levy in this cause, would be to permit him to deprive the plaintiff of that engine, valuable as it is, and essential as it is to the proper conduct of plaintiff's business, in which the public have an interest, without due process of law. We think that the statute authorizing the taxation of railroads in West Virginia is unconstitutional. It will be observed that the State of West Virginia has provided no judicial tribunal whatever for the hearing and decision of questions pertaining to the taxation of railroad property. It is true that it provides for an appeal to the circuit court of the county in which the property is located, but the Supreme Court of Appeals of West Virginia, the court of last resort of that State, has determined that the action of the circuit court in supervising the decision of the Board of Public Works as to the assessment and valuation of railroad property for taxation is merely administrative and not judicial, and that the court acts as an appellate assessment or tax tribunal and exercises powers distinct from those belonging to it as a court or judicial tribunal in the legal sense of that term. The same court has also held that it has no jurisdiction to review by writ of error a decision of a circuit court correcting an order of the Board of Public Works assessing and fixing the value of railroad property for taxation.

P. C. C. & St. L. R'w'y Co. vs. Bd. Pub. Works, 28 W. Va. 264.

It may be contended that a failure to provide a judicial tribunal for the determination of questions of taxation does not of itself deprive the citizen of his property, without due process of law, and that such a statute is not necessarily in violation of section 1 of the 14th amendment to the Constitution of the United States, but even if we concede this, which we only do for the sake of argument, still we think it true that section 67 is clearly unconstitutional and in clear violation of said section 1, and especially do we insist that to permit the sheriff to sell the property levied upon in this case would be clearly to deprive the plaintiff of that property without due process of law.

The statute fixes no time for the meeting of the Board of Public Works. Said Board is not required to and does not in fact notify the railroad companies interested of the time or place of its meeting. Said companies therefore have no opportunity to be heard upon the question of the taxation of their property, except in so far as they

may be heard through the return which the statute requires them to make.

The statute states specifically what that return shall contain. It neither authorizes nor permits a discussion of the questions arising upon the taxation of railroad property. It does not make the return conclusive, either as to the amount, character or value of the property affected. Even in this case, it is insisted by counsel for the defendants that the Board of Public Works is not bound by the return of the railroad company, but can fix its own valuation, not only without regard to that return, but in spite of it. And we think this is a proper construction of the statute in that respect. It may be said that the provision for an appeal gives the railroad company an opportunity to be heard. We may concede, for the sake of argument, that in an ordinary case, that would be true, and yet we have shown in the discussion of both the Second and Third propositions, that the Auditor has deprived us in this case of even the small favor of appealing from the decision of one ministerial tribunal to that of another ministerial tribunal in a matter deeply affecting our entire property in the State.

It is true that less legal formality is required in tax matters than in some other matters involving judicial proceedings, but it is also true that some formality is required, and it is insisted that no court has upheld a statute with such meager requirements as are contained in the West Virginia statute.

In the case of R. R. Co. vs. Commonwealth, 6 Sup. Ct. Rep. 57, a statute of the State of Kentucky, providing for the taxation of railroad property, was held to be constitutional, but it will be observed that the Kentucky statute fixes the time for the meeting of the Board of Equalizations of that State, and Mr. Justice Mathews, in delivering the opinion of the court, laid particular stress upon the fact that the law fixed the time when the Board should meet, and that the Supreme Court of Kentucky had construed that law as providing for a hearing upon the part of the railroad company. On page 61 of the opinion is the following language:

"They (the Board) are required to meet for that purpose on the first day of September, in each year, at the office of the Auditor, at the seat of government, when these returns are to be submitted to them. The statute declares that, 'should the valuations be either too high or too low, they shall correct and equalize the same by a proper increase or decrease thereof. Said Board shall keep a record of their proceedings, to be signed by each member present at any

meeting and the said Board is hereby authorized to examine the books and property of any railroad company to ascertain the value of its property, or to have them examined by any suitable disinterested person, to be appointed by them for that purpose.' And in the performance of these duties, their sessions are limited to a period of not longer than twenty days in any one year. These meettings are public and not secret. The time and place of holding them are fixed by law. The proceedings of the board are required to be made matter of record, and authenticated by the signature of the quorum present. Any one interested has the right to be present. In reference to this point, the Court of Appeals of Kentucky, in its decision in these cases, says (81 Ky. 492, 512) 'As we construe this act, although in the nature of an original assessment, the parties had a right to be heard, and were in fact, heard before the Board passing on the question of valuation.'"

It will be observed that there is a vast difference between the Kentucky statute and the West Virginia statute. The West Virginia statute does not fix he time for the meeting of the West Virginia Board of Public Works. Said Board is not required to keep a record of its proceedings. There is no limit fixed to the sessions of the West Virginia Board of Public Works. The sessions are not required to be public, and may, for anything the statute contains, be secret. The time and place for holding the meeting is not fixed by law. The proceedings of the Board are not required to be made matter of record and authenticated by the signature of the quorum present, or any one else. There is no provision that any one interested has the right to be present, and there is no decision of the Supreme Court of Appeals of West Virginia, or any other tribunal in West Virginia, holding that the railroad companies have the right to be present at the sessions of the Board of Public Works. We think it may be fairly assumed that had it not been for these provisions of the Kentucky statute, pointed out and dwelt upon by Justice Mathews, the court would have held that statute unconstitutional. Now as these provisions are all lacking in the West Virginia statute, it seems to us that the court will be compelled to hold that statute unconstitutional for want of them. In other words, the West Virginia statute does not contain the provisions which prevented the court from holding the Kentucky statute void, and that being true, the court must hold the West Virginia statute void. And these considerations are strongly emphasized in this case by the fact that the defects in the

West Virginia statute, together with the conduct of the Auditor in refusing to notify the plaintiff of the action of the Board of Public Works deprived the plaintiff of all possible opportunity of being heard either before the Board of Public Works or in the Circuit Court by appeal.

V.

The plaintiff is engaged in inter-state commerce, and the plaintiff's bridge is an instrument of inter-state commerce, and we insist that the taxation of said bridge as a separate structure by the State of West Virginia imposes an illegal burden upon inter-state commerce, and that said bridge as a separate structure is not a proper subject of state taxation. And especially do we insist that the taxation of said bridge both as a part of plaintiff's line of railway and as a separate structure is an unwarranted and illegal interference with inter-state commerce. It has been expressly held by this court that traffic across a river between States is inter-state commerce, and a bridge over such river is an instrument of inter-state commerce. Bridge Co. vs. Commonwealth, 14 Su. Ct. Rep. 1087. Mr. Justice Brown, in delivering the opinion of the court in that case, page 1030, uses the following language: "Under this power (the taxing power) the State may also tax the instruments of inter-state commerce as it taxes other similar property." It is a fair inference from the opinion in this case, and especially from the language quoted, that a State can only tax the instruments of inter-state commerce as it taxes other similar property. Now the State of West Virginia does not tax other similar property, or any other property more than once. And in this case it is not taxing plaintiff's bridge as it is taxing other similar property. As has already been shown, the plaintiff has a number of other bridges over streams in the State of West Virginia, and as will appear from the return made to the Auditor, a copy of which is filed as an exhibit of the bill. Those bridges are taxed as so much railroad and not as separate structures. The defendants are therefore not only doubly taxing the plaintiff's bridge, which is an instrument of inter-state commerce, but they are discriminating against it and in favor of other bridges of the plaintiff and other railroad companies in the State of West Virginia which are not instruments of inter-state commerce, and are imposing burdens of taxation upon plaintiff's bridge which are not imposed upon other simlar property, except, perhaps, bridges used in inter-state commerce. If the defendant can tax an instrument of inter-state

commerce more than once, there is no limit to the number of times said property may be taxed, and the State can therefore impose such burdens of taxation upon instruments of inter-state commerce as to destroy the commerce itself. If it be once determined or conceded that a State may impose double taxation upon instruments of inter-state commerce, then there is no place where the line can be drawn and no limit to the number of times such property may be taxed, and nothing to prevent the State from imposing such burdens of taxation upon it as will result in a practical confiscation of it..

VI.

In the discussion of the Second proposition we have already had something to say with reference to the cloud placed upon plaintiff's title to its bridge by the assessment complained of, and in that discussion we think we have shown conclusively that such tax does constitute a lien upon all of the plaintiff's real estate in the State of West Virginia, including the said bridge. If we are correct in this, all that we need to show in addition thereto to entitle us to an injunction is that the tax upon said bridge is illegal. That the tax upon this bridge is illegal we think we have clearly shown.

Counsel for defendants contend in their brief that no court of equity will allow its injunctive process to issue to restrain the collection of State taxes on the ground merely that they are illegal or unjust or irregular, and that there must be averments in the bill bringing the particular case under some recognized head of equity jurisdiction and further, that great caution is exercised by courts, and particularly Federal courts sitting in equity in the States in such interference with the collection of State taxes. A number of authorities are cited in support of this contention. One of the recognized heads of equity jurisdiction is that the act complained of constitutes a cloud upon the title to real estate. And however reluctant courts of equity may be to interfere with the collection of taxes, it is their duty to interfere and they do promptly interfere in all cases in which taxes are illegal and constitute a cloud upon the title to realty. This is shown by the authorities cited by the defendants, themselves.

In addition to this it has been expressly held by the Supreme Court of the State of West Virginia (and that is certainly good authority in this case) that an injunction will lie against the Auditor of the State to restrain him from the performance of a mere ministerial duty. C. & O. R. R. Co. vs. Miller, Supra,

Dows vs. Chicago, cited by counsel for the defendants holds that "A bill in equity to restrain the collection of a tax will not be sustained on the ground alone that the tax is illegal. It must appear in addition thereto that the enforcement of taxes will lead to a multiplicity of suits, or produce irreparable injury, or throw a cloud upon the title." Mr. Justice Field, in delivering the opinion of the court in that case, uses the following language, "No court of equity will therefore allow its injunction to issue to restrain their (tax collector's) action, except where it may be necessary to protect the rights of the citizen whose property is taxed and he has no adequate remedy by the ordinary process of law. It must appear that the enforcement of the taxes would lead to a multiplicity of suits, produce irreparable injury, or where the property is real estate throw a cloud upon the title of the plaintiff, before the aid of a court of equity can be invoked."

State Railroad Tax Cases hold, in substance, that it is essential to the granting of an injunction that the case be brought within some recognized rule of equity jurisdiction.

The case of Milwaukee vs. Koeffler related to the taxation of personal property, and is therefore not in point. We are not able to see that either Memphis vs. Shelby or Pacific vs. Seivert bear upon the questions involved in this case.

Several other authorities have been cited by counsel for the defendants, but we are unable to see that they afford the defendants any comfort.

Schulenberg vs. Haywood recognizes the rule that Federal courts of equity will enjoin the collection of illegal taxes where they throw a cloud upon the title to real estate.

Enfield vs. Hartford contains a definition of a bridge, and we have no fault to find with that definition, and do not think it militates at all against our contention that the bridge in controversy in this case is not such a structure as is authorized by section 67, to be taxed as a bridge or separate structure.

The case of the C. R. I. & P. R. R. Co. vs. Davenport, holds only that a bridge belonging to the United States can not be taxed as the property of a railroad company.

O'Neal vs. Bridge Company is a case in which the owners of property sought to escape all taxation. We admit our liability to be taxed upon our bridge as so much railroad, and that tax has been assessed and has been paid by us.

Robertson vs. Anderson was a case in which the question was

whether the valuation of the land in controversy and the improvements thereon should be aggregated or stated separately.

Kirtland vs. Hotchkiss was a case in which the questions involved arose between a state and one of its citizens and not a case in which the questions arose between a State and a citizen of another State.

Thompson vs. Pacific, etc., involved the question of the exemption of certain property from all taxation.

State Tax Cases hold simply that "The power of taxation of the State is limited to personal property and business within her jurisdiction, and that all taxation must be related to one of these subjects.

Home Ins. Co. vs. N. Y. relates to the right of a State to tax United States bonds and corporate franchises, and has no relation to the case at bar.

Transportation Company vs. Wheeling relates to taxes levied by a State upon vessels owned by citizens of the State.

Wiggins F. Co. vs. E. St. Louis is primarily a case in which the Ferry Company claimed exemption from all taxation

Huse vs. Glover involved questions relating to the navigation and improvement of navigation of certain rivers in the State of Illinois, and the right of that State to impose a tax or tonnage duty upon vessels engaged in such navigation.

Ratterman vs. W. U. T. Co. involved the right of the State of Ohio to impose a tax on inter-state commerce.

W. U. T. Co. vs. Mass. relates to the liability of a telegraph company to be taxed upon its real and personal property in the States in which it does business, and also the right of a State to impose a tax upon agencies of the Federal Government, and it is not perceived that anything contained in it militates against the claims of the plaintiff in this case.

The same may be said of Shelton vs. Platt.

Bridge proprietors vs. Hoboken & Co. involved the construction of an act of the Legislature of New Jersey, authorizing the taxation of a bridge over the Hackensack river, in that State, and held that the "structure" referred to by Mr. Justice Miller in his opinion in the case, was not a bridge within the meaning of the New Jersey statute.

The statement made by counsel for defendants that "officers have assessed and collected this tax on bridges over the Ohio, belonging to railroad companies since 1863," is not supported by anything in the record. It is a pure assumption without anything to sustain it. And, if it were true, it would not follow that because some other railroad

company has been paying an illegal and improper tax the plaintiff is bound to do so.

There are some other cases referred to by counsel for the defendants and some other points sought to be made by them, but it is not believed that any comment upon them is necessary.

It is respectfully insisted that the demurrer of the defendants, as well as their motion to dissolve the preliminary injunction heretofore awarded in this case, should both be overruled, and said injunction should be made permanent.

J. DUNBAR and
J. B. SOMMERVILLE,
Attorneys for Plaintiff.

§67. The president, vice president, secretary or principal accounting officers of any corporation or company owning or operating a railroad or railway, wholly or in part within this State, for the transportation of freight, or passengers, or both, for compensation, shall make a return in writing to the auditor on or before the first day of April in each year, which shall be signed and sworn to by one of said officers, showing in detail the following particulars for the year ending on the thirty-first day of December, next preceding, viz:

First. The whole number of miles of railroad owned, operated or leased by such corporation or company within this State.

Second. If such road so owned, operated or leased by such corporation or company be partly within and partly without this State, the whole number of miles thereof within this State, and the whole number of miles without the same, including its branches in and out of the State.

Third. Its railroad track in each county in this State through which it runs; giving the whole number of miles of road in the county, including the track and its branches, and side and second tracks, switches and turnouts therein, and the fair cash value per mile of such railroad in each county, including in such valuation such main track, branches, side and second tracks, switches and turnouts.

Fourth. All its rolling stock; giving a detailed statement of the number of cars, including passenger, mail, express, baggage, freight and other cars of every description, and the fair cash value of all such cars used wholly, or in part, in this State, distinguishing between such as are used wholly in this state and such as are used partly within and partly without the State; the whole number of engines, including their appendages used wholly or in part within this State, distinguishing between such as are used wholly within this State and such as are used partly within and partly without the same, and the fair cash value of such as are used wholly within the State, and such as are used partly within and partly without the State; and the proportional value of such cars and engines used by it partly within and partly without the State, according to the time used and the number of miles run by such cars and engines in and out of the State; and the proportional cash value thereof to each county in this State within which such railroad runs.

Fifth. Its depots, station houses, freight houses, machine and repair shops and machinery therein, and all other buildings, structures and appendages connected thereto or used therewith, together with all other real estate other than its railroad track, owned or used by it in

connection with its railroad, and not otherwise taxed, including telegraph lines owned or used by it, and the fair cash value of all buildings and structures, and all such machinery and appendages, and of each parcel of such real estate, including such telegraph line, and the cash value thereof in each county in this State in which it is located.

Sixth. Its personal property of every kind whatsoever including money, credits and investments, wholly held or used in this State, showing the amount and value thereof in each county.

Seventh. Its actual capital stock and the number, amount and value in cash, of the shares thereof; the amount of its capital stock actually paid in; the total amount of its bonded indebtedness, and of its indebtedness not bonded; its gross earnings for the year, including its earnings from its telegraph lines, which shall be stated separately, on the whole length of its road, including the branches thereof, in and out of the State, and also such earnings within this State on way freight and passengers, and the proportion of such earnings in this State on through freight and passengers carried over its lines in and out of the State, to be ascertained by the number of miles the same were carried by it within and the number of miles without the State.

Eighth. Its gross expenditures for the year, giving a detailed statement thereof under each class or head of expenditure. If any corporation or company fail to make such return to the auditor as herein required, it shall be guilty of a misdemeanor and fined one thousand dollars for each month such failure continues. Prosecutions for such failure shall be in the county wherein the seat of government is. If such return be made to the auditor, he shall lay the same, as soon as practicable thereafter, before the board of public works, and if such return be satisfactory to the board it shall approve the same, and by an order entered upon its records, direct the auditor to assess the property of such corporation or company, with taxes, and he shall thereupon assess the same as hereinafter provided. But if such return be not satisfactory to the board, or if any such company fail to make such return as herein required, said board of public works shall proceed in such manner as to it may seem best to obtain the facts and information required to be furnished by such return; and to this end the said board may send for persons and papers, and may compel the attendance of any person and the production of any paper necessary, in the opinion of said board, to enable it to obtain the information desired for the proper discharge of its duties under this section. Any expenses necessarily incurred by said board in procuring such infor-

mation shall be paid by the governor out of the contingent fund. If any person shall refuse to appear before said board when required by it to do so, as aforesaid, or shall refuse to testify before said board in regard to any matter as to which said board may require him to testify, or if any person shall refuse to produce any paper in his possession or under his control, which said board may require him to produce, every such person shall be guilty of a misdemeanor, and fined five hundred dollars and shall be imprisoned not less than one nor more than six months, at the discretion of the court. Prosecutions against any such person shall also be in the county wherein the seat of government is. As soon as possible after the board of public works shall have procured the necessary information to enable it to do so, said board shall proceed to assess and fix the fair cash value of all the property of said corporation or company hereinbefore required to be returned by it to the auditor, so far as the said board has been able to ascertain the same, in each county through which the railroad of any such corporation or company runs. In ascertaining such value the board shall consider any return which may have been previously made to the auditor by such corporation or company, and all the evidence and information it has been able to procure by the means aforesaid, and all such as may be offered by such corporation or company. And the decision of said board thereon made shall be final, unless the same be appealed from within thirty days after such decision comes to the knowledge of the president, vice president, secretary or principal accounting officer, or the attorney of such corporation or company transacting business for it in the county wherein the seat of government is, in the manner following. Any corporation or company claiming to be aggrieved by any such decision, may within the time aforesaid, appeal therefrom as to the assessment and valuation made within each county through which its road runs, to the circuit court of such county; and such appeal shall have precedence over all other cases on the docket of such court, and be tried in the shortest time possible after such appeal is docketed. The court shall hear all such legal evidence on such appeal as may be offered by the State, county, district or municipal corporation, and by the corporation or company taking such appeal. And if the court be satisfied that the value so fixed is correct, it shall confirm the same; but if it be satisfied that the value so fixed by said board is either too high or too low, the court shall correct the valuation so made and ascertain and fix the true value of such property according to the facts proved, and

certify such value to the auditor. In case the lists and valuations of the property filed with the auditor as aforesaid, be satisfactory to the board of public works, and in cases where an assessment of the property of such company is made by the board of public works as aforesaid, the auditor shall immediately certify to the county court of each county through which such railroad runs, the value of the property therein of every such company as valued or assessed as aforesaid, and it shall be the duty of such court to apportion the whole of such value between such districts and independent school districts in their county through which said road runs, as near as may be according to the value thereof, and then a proportional valuation to each municipal corporation in their county through which said road runs according to the value thereof. It shall be the duty of the clerk of the county court of every county through which any railroad runs, within thirty days after the county and district levies are laid by such court to certify to the auditor the apportionment made by the county court as aforesaid, and the amount levied upon each one hundred dollars' value of the property in the county for county purposes, and on the value of the property in each magisterial district through which such railroad is located, for district purposes. It shall also be the duty of the secretary of the board of education of every school district and independent school district through which the railroad runs, in each county, within thirty days after the levy is laid therein for free school and building purposes, or either, to certify to the auditor the amount so levied on each one hundred dollars' value of the property therein for each of said purposes, and it shall be the duty of the recorder, clerk or other recording officer of every municipal corporation, through which such railroad runs, within the same time after a levy is laid therein for any of the purposes authorized by law, to certify to the auditor the amount levied upon each one hundred dollars' value of the property therein for each and every purpose. Any clerk of a county court, secretary of a board of education, or recorder, clerk or other recording officer of a municipal corporation, who shall fail to perform any of the duties herein required of him, shall be guilty of a misdemeanor, and fined not less than one hundred nor more than five hundred dollars. In case of the failure of any such officer to furnish to the auditor the certificate herein required, the auditor may obtain the rate of taxation for any of said purposes from the copies of land books on file in his office, if the same be found in such books, if not, in such other way or manner as he may deem necessary or proper for the purpose. As soon as

possible after the value of the property of such corporation or company is fixed by the board of public works, or by the circuit court on appeal as aforesaid, and after he shall have obtained the information herein provided for to enable him to do so, the auditor shall assess and charge the property of every such corporation or company with the taxes properly chargeable thereon, in a book to be kept by him for that purpose, as follows:

First. With the whole amount of taxes upon its property for state and state school purposes.

Second. With the whole amount of taxes on its property, in each county through which its road runs, for county purposes.

Third. With the whole amount of taxes on its property in each magisterial district through which its road runs, for road and other district purposes other than free school and building purposes.

Fourth. With the whole amount of taxes on its property in each school district and independent school district through which its road runs, for free school and building purposes; and

Fifth. With the whole amount of its taxes on its property in each municipal corporation through which its road runs, for each and all of the purposes for which a levy therein is made by the municipal authorities of such corporation. And no injunction shall be awarded by any court or judge to restrain the collection of the taxes or any part of them so assessed, except upon the ground that the assessment thereof was in violation of the constitution of the United States, or of this State, or that the same were fraudulently assessed, or that there was a mistake made by the auditor in the amount of taxes properly chargeable on the property of said corporation or company; and in the latter case no such injunction shall be awarded unless application be first made to the auditor to correct the mistake claimed, and the auditor shall refuse to do so, which facts shall be stated in the bill. The auditor shall, as soon as possible, after he completes the said assessments, make out and transmit by mail or otherwise, a statement of all taxes and levies so charged to the president, vice president, secretary or principal accounting officer of such corporation or company and it shall be the duty of such corporation or company so assessed and charged, to pay the whole amount of such taxes and levies upon its property, into the treasury of the State, by the twentieth day of January next after the assessment thereof, subject to a deduction of 2½ per centum upon the whole sum if the same be paid on or before that day. If any such corporation or company fail to pay such taxes and levies by the said twentieth day of January, the

auditor shall add ten per centum to the amount thereof, to pay the expenses of collecting the same, and shall certify to the sheriff of each county the amount of such taxes and levies assessed within his county; and it shall be the duty of every such sheriff to collect and account for such taxes and levies in the same manner as other taxes and levies are collected and accounted for by him. And when the district and independent school district taxes and levies are collected by him, he shall immediately pay the same to the treasurer of the proper district. Neither the county court of any county, nor any tribunal acting in any county in lieu of a county court, or otherwise, nor any board of education, nor the municipal authorities of any incorporated city, town or village, shall have jurisdiction, power or authority, by compromise or otherwise, to remit or release any portion of the taxes or levies so assessed upon the property of any such corporation or company; and when such taxes and levies are certified to the sheriff of any county for collection, as aforesaid, it shall be his duty to collect the whole thereof, regardless of any order or direction of any such county court, tribunal, board of education or municipal authority to the contrary; and if he fail to do so, he and his securities on his official bond shall, unless he be restrained or prohibited from so doing by legal process from some court having jurisdiction to issue the same, be liable thereon for the amount of said taxes and levies he may so fail to collect, if he could have collected the same by the use of due diligence. Any member of a county court, or tribunal acting in lieu thereof, or of a board of education, or of the council, or other tribunal of a municipal corporation, who shall vote to remit or release any part of the taxes so assessed on the property of any such corporation or company, shall be guilty of a misdemeanor, and fined five hundred dollars, and shall be removed from his office by the court by which the judgment of such fine is rendered, in addition to such fine. When such taxes and levies due to a municipal corporation are collected by the sheriff, he shall pay the same to the proper collecting officer or treasurer of such municipal corporation or otherwise, as the council, or other proper authority thereof may direct. And when such taxes and levies are paid into the treasury, as herein provided, the auditor shall account to the sheriff of each of the counties to which any sum so paid in for county levies belongs, for the amount due such county, and may arrange the same with such sheriff in his settlement for the State taxes in such a way as may be most convenient; and the sheriff shall account to the county court of his county for the amount

so received by him, in the same manner as for other county levies: Provided, that the taxes assessed for the last year of the term of office of a sheriff shall be paid to or settled with, the sheriff who was in office at the time the assessment was made. The amount so paid in for each district and independent school district shall be added to the distributable share of the school fund payable to such district, and paid upon the requisition of the county superintendent of free schools, in like manner as other school moneys are paid. The auditor shall certify to the county court of every such county, on or before the first day of April in each year, the amount with which the sheriff thereof is chargeable on account of the levy upon the property of such company. He shall also certify to the county superintendent of free schools the amount of such levies due to each district and independent school district in his county for free school purposes. The amount so paid in for each municipal corporation shall, as soon as received by the auditor, be paid over to the treasurer of the municipal corporation to which such taxes are due, or to such other officer of the corporation as the council may designate, and the auditor shall report such payment to the council. But the failure of the clerk of any county court, or the secretary of any board of education, or the proper officer of any municipal corporation, to certify to the auditor the levies or apportionment within the time herein prescribed, shall not invalidate or prevent the assessment required by this section, but the auditor shall make the assessment and proceed to collect or certify the same to the sheriff, as soon as practicable, after he shall obtain the information necessary to make such assessment. The right of the State, or of any county or district, or municipal corporation to enforce by suit or otherwise, the collection of taxes or levies, heretofore assessed, or the right to which has heretofore accrued, shall not in any manner be affected or impaired by anything in this chapter contained. All buildings and real estate owned by such company and used or occupied for any purpose not immediately connected with its railroad, or which is rented or occupied for any purpose to or by individuals, shall be assessed, with the taxes properly chargeable thereon, the same as other property of the like kind belonging to an individual. No such company or corporation as is mentioned in this section shall be exempt from taxation, whether the same has been or may be created, organized or operated by, under or by virtue of any general or special law or laws, or whether heretofore exempted from taxation or not, but this section shall apply to all such companies and corporations without distinction or exception."

§1. "The governor, auditor, treasurer, superintendent of free schools, and attorney general, shall be and continue a corporation under the style of 'The Board of Public Works.'"

§63. "The assessors shall ascertain the yearly value of all toll bridges and ferries in his district, except such as are by law exempt from taxation. He shall make a just estimate of their annual value. For purposes of taxation, the value of a toll bridge or a ferry shall be taken to be ten times its annual value. The assessors shall also ascertain the yearly value of all railroad bridges upon which a separate toll or fare is charged in his district, except such as are by law exempt from taxation, and shall make a just estimate of their annual value. For purposes of taxation, the value of a railroad bridge, upon which a separate toll or fare is charged, shall be taken to be ten times its annual value."